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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/790,322

03/01/2004

Patrick W Truitt

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03/18/2010

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

PATEL, PRITESH ASHOK

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

03/18/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/790,322	TRUITT, PATRICK W	
	Examiner	Art Unit	
	PRITESH PATEL	3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10-13 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10-13 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenyon et al. (US 6216691 B1) in view of McGee et al. (US 6926503 B2).

Concerning claims 1 and 2, Kenyon et al. discloses a housing, a gas flow generator, and a means of flow of gas from a generator to a patient (column 2 lines 38-45). Kenyon et al. does not disclose a first or second elastomeric member to minimize noise. McGee et al. discloses a plurality of elastomeric members that reduce vibrations and noise (claims 1, 2, and 4 of McGee et al.). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kenyon et al. with a plurality of vibration members made of an elastomer to be placed in between elements as taught by McGee et al. to reduce wear and tear on a device.

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4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenyon et al. in view of McGee et al. in further view of Gatley, Jr. (US 6511288 B1).

Concerning claims 3 and 4, Kenyon et al. in view of McGee et al. fails to disclose a mounting plate supporting a gas flow generator or a securing member. Gatley, Jr. discloses a mounting plate for a housing to mount a gas flow generator and a securing member (column 2 lines 47-67). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kenyon et al. in view of McGee et al. with a mounting plate and a securing member as taught by Gatley, Jr. to reduce vibrations during use of the gas flow generator. It would have further been obvious to one of ordinary skill in the art at the time of the invention to use an elastomeric member in between said mounting plate and the gas flow generator and between said securing member and the gas flow generator as McGee et al. shows that the elastomeric members can be placed around the gas flow generator between peripheral elements and that a securing member can have recesses, making it obvious for a mounting plate, to receive said elastomeric members, as cited above.

5. Claims 5-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenyon et al. in view of McGee et al. in further view of Gatley, Jr. in further view of Estes et al. (US 5904141).

Concerning claims 5-7 and 10-12, in addition to the above disclosure, modified Kenyon et al. fails to disclose a valve attached to said mounting plate and tubular coupling between gas flow generator and a patient circuit. Estes et al. discloses a valve that regulates a gas flow device and a tubular coupling between a gas flow generator

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and a patient circuit (column 10 lines 37-44 and column 10 line 23). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Kenyon et al. in view of McGee et al. in further view of Gatley, Jr. with a tubular coupling, a valve, and a patient circuit as taught by Estes et al.

Concerning claims 13, 16, 17, and 20, the above disclosure meets all the limitations of these claims.

Concerning claim 18, it would have been obvious to one of ordinary skill in the art at the time of the invention that a rubber compound of 2.79 durometers is commonly used in medical devices and for vibration dampening means.

Concerning claim 19, it would have been obvious to one of ordinary skill in the art at the time of the invention that at tube connection two sections of a system may have thicker portions at the connection points as is common in many arts.

Response to Arguments

Applicant's arguments filed 10/20/2009 have been fully considered but they are not persuasive. Applicant argues that a thermoplastic elastomer allows for injection molding and for this reason the elastomer of the prior art does not read on the limitations of the claimed invention. However, McGee ('503) states:

"Because of the properties of elastomeric material, the retainers may be directly molded to the manifold. The use of elastomeric materials also allows any vibration to be kept to a minimum and the noise from the pump 218 can be absorbed by the elastomeric assembly." Thermoplastic means that at some temperature a plastic body will melt and then at some temperature the same plastic body

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will cool into a solid. The examiner interprets the elastomer of the prior art as being able to function in this way and therefore the applicant's thermoplastic limitation adds no new benefit and appears the same as the prior art.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRITESH PATEL whose telephone number is (571)270-7025. The examiner can normally be reached on Monday-Friday 7:30Am-5:00PM, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on (571)272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. P./

Examiner, Art Unit 3763

03/12/2010

/Nicholas D Lucchesi/

Supervisory Patent Examiner, Art Unit 3763